

Department of Justice

§ 59.3

establish certain criteria and procedural requirements which must be met before a search warrant may be used to obtain documentary materials held by disinterested third parties. The guidelines in this part are not intended to inhibit the use of less intrusive means of obtaining documentary materials such as the use of a subpoena, summons, or formal or informal request.

§ 59.2 Definitions.

As used in this part—

(a) The term *attorney for the government* shall have the same meaning as is given that term in Rule 54(c) of the Federal Rules of Criminal Procedure;

(b) The term *disinterested third party* means a person or organization not reasonably believed to be—

(1) A suspect in the criminal offense to which the materials sought under these guidelines relate; or

(2) Related by blood or marriage to such a suspect;

(c) The term *documentary materials* means any materials upon which information is recorded, and includes, but is not limited to, written or printed materials, photographs, films or negatives, audio or video tapes, or materials upon which information is electronically or magnetically recorded, but does not include materials which constitute contraband, the fruits or instrumentalities of a crime, or things otherwise criminally possessed;

(d) The term *law enforcement officer* shall have the same meaning as the term “federal law enforcement officer” as defined in Rule 41(h) of the Federal Rules of Criminal Procedure; and

(e) The term *supervisory official of the Department of Justice* means the supervising attorney for the section, office, or branch within the Department of Justice which is responsible for the investigation or prosecution of the offense at issue, or any of his superiors.

§ 59.3 Applicability.

(a) The guidelines set forth in this part apply, pursuant to section 201 of the Privacy Protection Act of 1980 (Sec. 201, Pub. L. 96-440, 94 Stat. 1879, (42 U.S.C. 2000aa-11)), to the procedures used by any federal officer or employee, in connection with the investigation or prosecution of a criminal

offense, to obtain documentary materials in the private possession of a disinterested third party.

(b) The guidelines set forth in this part do not apply to:

(1) Audits, examinations, or regulatory, compliance, or administrative inspections or searches pursuant to federal statute or the terms of a federal contract;

(2) The conduct of foreign intelligence or counterintelligence activities by a government authority pursuant to otherwise applicable law;

(3) The conduct, pursuant to otherwise applicable law, of searches and seizures at the borders of, or at international points of entry into, the United States in order to enforce the customs laws of the United States;

(4) Governmental access to documentary materials for which valid consent has been obtained; or

(5) Methods of obtaining documentary materials whose location is known but which have been abandoned or which cannot be obtained through subpoena or request because they are in the possession of a person whose identity is unknown and cannot with reasonable effort be ascertained.

(c) The use of search and seizure to obtain documentary materials which are believed to be possessed for the purpose of disseminating to the public a book, newspaper, broadcast, or other form of public communication is subject to title I of the Privacy Protection Act of 1980 (Sec. 101, *et seq.*, Pub. L. 96-440, 94 Stat. 1879 (42 U.S.C. 2000aa, *et seq.*)), which strictly prohibits the use of search and seizure to obtain such materials except under specified circumstances.

(d) These guidelines are not intended to supersede any other statutory, regulatory, or policy limitations on access to, or the use or disclosure of particular types of documentary materials, including, but not limited to, the provisions of the Right to Financial Privacy Act of 1978 (12 U.S.C. 3401, *et seq.*), the Drug Abuse Office and Treatment Act of 1972, as amended (21 U.S.C. 1101, *et seq.*), and the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment, and Rehabilitation Act of 1970, as amended (42 U.S.C. 4541, *et seq.*).